

## CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number: \_\_\_\_\_

Meeting Type: Regular

Meeting Date: Oct 8, 2015

Action Requested By: Legal

Agenda Type: Resolution

Subject Matter:

BCA CM, LLC d/b/a Bedrock Capital Associates, LLC

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Tenant Estoppel Certification between the City of Huntsville and BCA CM, LLC d/b/a Bedrock Capital Associates, LLC.

**Note: If amendment, Please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: \_\_\_\_\_

Briefly state why the action is required; why it is recommended; what council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: \_\_\_\_\_

Budgeted Item: Not Applicable

MAYOR RECOMMENDS OR CONCURS: \_\_\_\_\_

Department Head  \_\_\_\_\_

Date: 10-1-15

**RESOLUTION NO.15-\_\_\_\_\_**

**WHEREAS**, the City of Huntsville entered into a lease agreement with Bailey Cove, LLC for property located at 7900 Bailey Cove Road, Suite 4L on May 6, 1999 pursuant to Resolution No. 99-351 of the Huntsville City Council; and

**WHEREAS**, the said lease was subsequently modified and renewed pursuant to Resolutions No. 99-1009, 01-827, 09-1169 and 14-1006; and

**WHEREAS**, the Lessor's lender has required the City to execute the attached "Tenant Estoppel Certificate" in order for the Lessor to obtain continued financing on the Leased Premises;

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, is hereby authorized to execute a Tenant Estoppel Certification by and between the City of Huntsville and BCA CM, LLC. d/b/a Bedrock Capital Associates, LLC., on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as a "Tenant Estoppel Certification by and between the City of Huntsville and BCA CM, LLC. d/b/a Bedrock Capital Associates, LLC." consisting of four (4) pages, including Schedule "1" and the date of October 8, 2015, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 8th day of October, 2015.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 8th day of October, 2015.

\_\_\_\_\_  
Mayor of the City of  
Huntsville, Alabama

## TENANT ESTOPPEL CERTIFICATE

October \_\_\_\_\_, 2015

Tenant  
Dats  
Here



BCA CM LLC  
d/b/a Bedrock Capital Associates LLC  
24 West 40th Street, 17th Floor  
New York, NY 10018  
Attn: Jason Shukofsky, Executive Director

Re: Lease between Bailey Cove, LLC, as Landlord or its assignees ("**Landlord**") and The City of Huntsville, Alabama, as Tenant ("**Tenant**") dated April 15, 1999, for approximately 12,250 square feet of space in Bailey Cove Shopping Center, 7900 Bailey Cove Road, Suite 9, Huntsville, AL 35802 (the "**Property**"), as amended, supplemented and/or modified by the amendments, modifications, side letters, guaranties, letters of credit and other documents listed on Schedule 1 attached hereto (as so amended, supplemented and/or modified, the "**Lease**")

Ladies and Gentlemen:

The undersigned Tenant understands and acknowledges that Landlord has obtained or is in the process of obtaining a mortgage loan ("**Loan**") from BCA CM LLC (together with its successors and assigns, "**Lender**") which Loan is or will be evidenced by a note secured by a mortgage, deed of trust or other security instrument upon the captioned property ("**Mortgage**") and that Lender, in making the Loan, is relying upon Tenant's certification herein.

Tenant hereby certifies to Landlord and Lender that:

1. The Lease has commenced pursuant to its terms and is in full force and effect. Tenant has not given Landlord any notice of termination under the Lease.
2. There are no amendments, supplements or modifications of any kind to the Lease except as set forth on Schedule 1. The Lease represents the entire agreement between Tenant and Landlord with respect to the leasing and occupancy of the premises leased under the Lease; there are no other promises, agreements, understandings, or commitments of any kind between Landlord and Tenant with respect thereto.
3. There has not been and is now no subletting of the leased premises, or any part thereof, or assignment by Tenant of the Lease, or any rights therein, to any party, other than as follows: None.
4. Tenant is open for business and in operation at the Property. Except as otherwise set forth in the Lease, the Tenant has no right to vacate the leased premises or cease to operate its business therefrom.

\_\_\_\_\_  
President of the City Council of the  
City of Huntsville, Alabama  
Date: \_\_\_\_\_

5. No uncured default, event of default, or breach by Landlord exists under the Lease, and no facts or circumstances exist that, with the passage of time or giving of notice, will or could constitute a default, event of default, or breach by Landlord under the Lease. Tenant has made no claim against Landlord alleging Landlord's default under the Lease.

6. Tenant has accepted full possession of its leased premises at the Property. All of the construction obligations of the Landlord under the Lease have been duly performed and completed including, without limitation, any obligations of the Landlord to make or to pay the Tenant for any improvements, alterations or work done on the leased premises, and the improvements described in the Lease have been constructed in accordance with the plans and specifications therefor and have been accepted by Tenant. All common areas of the Property (including, without limitation, parking areas, sidewalks, access ways and landscaping) are in compliance with the Lease and are satisfactory for Tenant's purposes.

7. To the best of Tenant's knowledge and belief, there are no rental, lease, or similar commissions payable with respect to the Lease, except as may be expressly set forth therein.

8. The term of the Lease commenced on September 1, 1999 and terminates on December 31, 2019, unless sooner terminated in accordance with the terms of the Lease. Tenant has no option to renew or extend the lease term except as follows: None.

9. The minimum base rent in the monthly amount of \$11,000.00 and a monthly operating expense and real estate tax estimate in the amount of NONE are currently payable under the Lease. The date of Tenant's last rental payment was September 4, 2015. Tenant is current with respect to, and is paying the full rent and other charges stipulated in the Lease.

10. As of the date hereof, Tenant is not entitled to any credits, reductions, offsets, defenses, free rent, rent concessions or abatements of rent under the Lease or otherwise against the payment of rent or other charges under the Lease.

11. A security deposit in the amount of NONE has been given by Tenant under the terms of, or with respect to, the Lease.

12. Tenant has no option or right to purchase the property of which the premises are a part, or any part thereof.

13. Tenant has not at any time and does not presently use the leased premises for the generation, manufacture, refining, transportation, treatment, storage or disposal of any hazardous substance or waste or for any purpose which poses a substantial risk of imminent damage to public health or safety or to the environment.

14. The undersigned representative of Tenant is duly authorized and fully qualified to execute this instrument on behalf of Tenant thereby binding Tenant.

15. Neither Tenant nor any guarantor of the Lease is presently the subject of any proceeding pursuant to the United States Bankruptcy Code of 1978, as amended.

16. Tenant acknowledges and agrees that Landlord, Lender, co-lenders or participant lenders of the Loan and their respective successors and assigns shall be entitled to rely on Tenant's certifications set forth herein.

TENANT:

THE CITY OF HUNSTVILLE, ALABAMA

By: \_\_\_\_\_

Name:

Title:

## **SCHEDULE 1**

### **AMENDMENTS, MODIFICATIONS, SIDE LETTERS, GUARANTIES, LETTERS OF CREDIT OR OTHER MODIFICATIONS**

Whereas Landlord and Tenant entered into a Lease Agreement dated April 15, 1999, which has been amended on November 23, 1999 "Modification 001" and subsequently amended September 27, 2001 "Modification 002", and subsequently amended December 3, 2009 "Renewal and Extension of Lease Agreement", and subsequently amended December 18, 2014 "Modification 004".

## ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: Legal Council Meeting Date: 10/8/2015

Department Contact: Peter Joffrion Phone # 5026

Contract or Agreement: Tenant Estoppel Certification between the City of Huntsville and BCA CM, LL...

Document Name: Tenant Estoppel Certification between the City of Huntsville and BCA CM, LLC d/b/a...

City Obligation Amount: - 0 -

Total Project Budget: - 0 -

Uncommitted Account Balance:

Account Number:

### Procurement Agreements

<u>Not Applicable</u>	<u>Not Applicable</u>
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### Grant-Funded Agreements

<u>Not Applicable</u>	Grant Name: <u></u>
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Department	Signature	Date
1) Originating	<i>Mary C. Cates</i>	<i>Oct 1, 2015</i>
2) Legal	<i>Mary C. Cates</i>	<i>Oct 1, 2015</i>
3) Finance	<i>[Signature]</i>	<i>10/1/15</i>
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		